THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.8956 OF 2005

Dated: 14-12-2005

Between

Sri E.V. Sadasiva Reddy, S/o. Venkat Reddy, Occ: Business,
R/o. 40-326/3, Park Road, B.R.P. Complex, Gandhinagar, Kurnool – 518 001.

…PETITIONER

AND

The Chief General Manager (Telecom A.P. Circle), B.S.N.L, Nampally Station Road, Abids, Hyderabad and others.

…RESPONDENTS

ORDER:

Petitioner seeks a Writ of Mandamus to declare the action of the respondents in disconnecting his telephone bearing No.225730 of Kurnool exchange is illegal and arbitrary.

Learned counsel for the petitioner submits that the petitioner is a subscriber of telephone connection bearing No.225730 installed on 09.03.2003 at his residence bearing No.40-326/3, Park Road, BPR Complex, Kurnool and the same was disconnected with effect from 16.02.2005 without giving any notice to him on the ground that his wife, who was subscriber in respect of LPT No.48201, defaulted an amount of Rs.4,128/- in respect of the said local public telephone.

The learned counsel further submits that the wife of the petitioner was sanctioned a Local Public Telephone No. KNL – 48201 on 23.08.1999 and the same was installed at the premised bearing No.27-47, Chinna Market Area, Kurnool Town. As the said public call office was not running properly petitioner's wife made an application to shift the same to

premises bearing No.40-353/A, Gandhinagar, Kurnool Town and in the process of shifting there was a delay of three months. However, as the wife of the petitioner could not pay the bills the telephone was disconnected on 31.05.2001. It is further submitted that for the amount due and payable by the wife of the petitioner in respect of telephone No.48201, the telephone of the petitioner cannot be disconnected, as he is not the subscriber of the said telephone.

Counter has been filed stating that the wife of the petitioner defaulted in payment of Rs.4,128/- in respect of the Local Public Telephone No. KNL- 48201 and the same was disconnected on 31.05.2001. In spite of several notices issued calling upon her to pay the dues, she has not paid the same. It is further stated that one of the said notices dated 09.08.2002 was received by the petitioner, but the petitioner also did not pay the dues payable by his wife and therefore, the telephone connection of the petitioner was disconnected on 16.02.2005 invoking Rule 443 of Indian Telegraph Rules, 1991 (for short 'the Rules'). It is further stated that the department is entitled to invoke Rule 443 of the said Rules against the telephone connection of husband for the dues of the petitioner and a similar contention was also upheld by the Division Bench of this Court in W.A.No.933 of 1995 in **Assistant General Manager v. M/s. Mahalakshmi Legal & Tax Consultancy Services.**

I have perused the said judgment wherein the wife and husband were partners of the partnership firm. Therefore, the wife and the husband were subscribers of different telephones provided to their firm and they are accountable to each other as well as for the activities of the firm and for non-payment of the telephone charges; the telephone of the subscriber in the individual name can be disconnected. Therefore, the facts of the said judgment have no application to the instant case. It is relevant to quote Rule 443 of the said Rules:

> "**Default of payment**.- If, on or before the due date, the rent or other charges in respect of the telephone service provided are not paid by the subscriber in accordance with these rules, or bill for charges in respect of calls (Local and Trunk) or phonograms or other dues from the subscriber are not duly paid by him, any telephone or telephones or any telex service rented by him may be disconnected without notice.
> The telephone or telephones or the telex so disconnected may, if the Telegraph Authority thinks fir, be restored, if the defaulting subscriber pays the outstanding dues

and the reconnection fee together with the rental for such portion of the intervening period (during which the telephone or telex remains disconnected) as may be prescribed by the Telegraph Authority from time to time. The subscriber shall pay all the above charges within such period as may be prescribed by the Telegraph Authority from time to time."

The "Subscriber" as defined under Rule 2 (pp) means a person to whom a telephone service has been provided by means of an installation under these rules or under an agreement.

Admittedly, the petitioner is subscriber in respect of the telephone No.225730 whereas his wife is the subscriber of LPT No. KNL – 48201. As per the definition of subscriber the petitioner is a subscriber to a different telephone service from that of his wife. Therefore, the petitioner has no legal duty to pay the telephone bills of his wife. The petitioner cannot be termed as defaulting subscriber of his telephone as there are no dues payable by him in respect of his telephone connection. The wife of the petitioner is the defaulting subscriber of a Public Call Office, which was already closed. Therefore, this Court is of the opinion that under Rule 443 of the Rules it cannot be said that petitioner is a subscriber of the said Local Public Telephone connection to which his wife was subscriber and for the dues payable in respect of the said telephone connection, the telephone connection of the petitioner cannot be disconnected.

For the aforesaid reasons, the writ petition is allowed directing the respondents to restore the telephone connection of the petitioner forthwith without collecting the restoration charges. However, it is always open for the respondents to take appropriate steps for recovery of the dues from the defaulting subscriber i.e. wife of the petitioner.

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V. ESWARAIAH, J

December 14, 2005

Note: Furnish C.C. of the order by 17.12.2005

(**B/O**)

DSK